JUDGE BATTS

13 CV 0405

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

PATRICK CARNEY and DANIEL AUERBACH (collectively and professionally known as "THE BLACK KEYS"); and THE BLACK KEYS PARTNERSHIP d/b/a MCMOORE MCLESST PUBLISHING,

Plaintiffs,

٧.

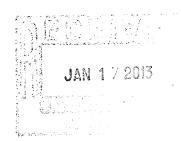
CHESKY RECORDS, INC. d/b/a
MANHATTAN PRODUCTION MUSIC;
MANHATTAN PRODUCTION MUSIC, INC.;
and PINNACLE ENTERTAINMENT, INC.,

Defendants.

CASE NO.

COMPLAINT

DEMAND FOR JURY TRIAL



Plaintiffs Patrick Carney ("Carney") and Daniel Auerbach ("Auerbach") (collectively and professionally known as "The Black Keys") and Plaintiff The Black Keys Partnership d/b/a McMoore McLesst Publishing (collectively, "Plaintiffs"), by their attorneys, Mitchell Silberberg & Knupp LLP, for their Complaint against Defendants Chesky Records, Inc. d/b/a Manhattan Production Music, Manhattan Production Music, Inc. and Pinnacle Entertainment, Inc. (collectively, "Defendants") allege, upon knowledge as to their own acts and upon information and belief as to the acts of others, as follows:

NATURE OF THE CLAIMS

- 1. Plaintiffs bring this action to put an immediate stop to, and to obtain redress for, Defendants' blatant and purposeful infringement of the copyright in Plaintiffs' musical composition entitled "Howlin' For You".
- 2. Plaintiffs are hugely successful musical artists and songwriters. Plaintiffs Carney and Auerbach comprise the Grammy Award-winning, critically acclaimed musical duo "The Black Keys". "Howlin' For You", which was co-written by Plaintiffs, is a single from their

Grammy Award-winning, platinum-selling album "Brothers". "Howlin' For You" is one of The Black Keys' most licensed tracks, and has sold over 600,000 copies.

- 3. Recognizing Plaintiffs' popularity, talent and goodwill, and in a brazen and improper effort to capitalize on Plaintiffs' hard-earned success, Defendants created and publicized (or caused to be created and publicized) commercial advertisements for Pinnacle's "L'Auberge" casinos which prominently feature significant portions of Plaintiffs' musical composition "Howlin' For You" without authorization from Plaintiffs.
- 4. Defendants' conduct is causing, and unless immediately enjoined will continue to cause, enormous and irreparable harm to Plaintiffs. Defendants may not continue to exploit Plaintiffs' musical composition without authorization in order to advertise to the public. Defendants' conduct must immediately be stopped and Plaintiffs must be compensated for Defendants' willful acts of infringement.

JURISDICTION AND VENUE

- 5. This is a civil action seeking damages and injunctive relief for copyright infringement under the United States Copyright Act, 17 U.S.C. § 101 et seq., and for claims arising under the Lanham Act, 15 U.S.C. § 1051 et seq.
- 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court further has jurisdiction under 28 U.S.C. § 1367.
- 7. This Court has personal jurisdiction over Defendants pursuant to, *inter alia*, New York Civil Practice Law and Rules §§ 301 and 302.
- 8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), and/or § 1400(a).

THE PARTIES

- 9. Plaintiff Carney is a musical artist and a songwriter, a co-author of the musical composition entitled "*Howlin' For You*," and a legal and/or beneficial owner of a copyright interest in and to that musical composition.
- 10. Plaintiff Auerbach is a musical artist and a songwriter, a co-author of the musical composition entitled "Howlin' For You," and a legal and/or beneficial owner of a copyright interest in and to that musical composition.
- 11. Plaintiff The Black Keys Partnership d/b/a McMoore McLesst Publishing is a copyright owner and claimant in and to the musical composition "Howlin' For You."
- 12. Upon information and belief, Defendant Chesky Records, Inc. d/b/a Manhattan Production Music ("Chesky Records" or "Manhattan Production Music") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York, and is engaged in the business of, among other things, composing musical compositions in connection with commercial advertisements.
- 13. Upon information and belief, Defendant Manhattan Production Music, Inc. d/b/a Manhattan Production Music ("MPM") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York, and is engaged in the business of, among other things, composing musical compositions in connection with commercial advertisements.
- 14. Upon information and belief, Chesky Records and MPM both do business as Manhattan Production Music. They are collectively referred to as "Manhattan Production Music."

- and existing under the laws of the State of Delaware, with its principal place of business in Las Vegas, Nevada. Pinnacle does business throughout the United States, and, upon information and belief, contracted with a New York company, Chesky and/or MPM, to create the infringing commercial advertisements at issue. Pinnacle is engaged in the business of owning and operating casinos.
- 16. Plaintiffs are informed and believe, and on that basis aver, that, at all times mentioned in this Complaint, each of the Defendants was the agent and/or alter ego of each of the other Defendants and, in doing the things alleged in this Complaint, was acting within the course and scope of such agency.

STATEMENT OF FACTS

- 17. Plaintiffs are the co-authors of the music and lyrics to the original musical composition "Howlin' For You." Plaintiffs own the rights and title to the copyright in the composition "Howlin' For You" as authors and through their publishing entity McMoore McLesst Publishing.
- 18. Plaintiffs registered the musical composition "Howlin' For You" with the United States Copyright Office on June 1, 2010. A true and correct copy of such copyright registration is annexed hereto as Exhibit A.
- 19. "Howlin' For You" was released on May 18, 2010 as part of The Black Keys' sixth album entitled "Brothers," which album was released by Nonesuch Records, a division of the Warner Music Group.

- 20. In or around August 2012, it came to Plaintiffs' attention that Defendants and/or their agents reproduced, distributed, and/or publicly performed an infringing musical composition (the "Infringing Music") substantially similar to "Howlin' For You" (the "Infringed Composition") without Plaintiffs' authorization in a commercial advertisement entitled "THAT'S THE LIFE" (and alternatively titled "GOOD TIMES") for Pinnacle's casino L'Auberge Casino Resort Lake Charles (the "First Infringing Advertisement").
- 21. Upon information and belief, the First Infringing Advertisement began running on or around September 19, 2011.
- 22. On or around August 15, 2012, in response to a "Tweet" by a fan of The Black Keys pointing out Defendants' unauthorized copying of the Infringed Composition, a representative of Pinnacle's L'Auberge casino publicly asserted that the First Infringing Advertisement embodying the Infringing Music contained a "fully licensed musical interpretation of the [Infringed Composition]." A true and correct copy of such statement is annexed hereto as Exhibit B.
- 23. Additionally, on a YouTube webpage featuring the First Infringing Advertisement (http://www.youtube.com/watch?v=YMhzXFe8jcw&feature=plcp), a representative of Pinnacle with the username "ldlcasino" asserted that the Infringing Music contained in the First Infringing Advertisement is "a Licensed track inspired by Howlin' For You by the Black Keys". A true and correct copy of such You Tube webpage is annexed hereto as Exhibit C.
- 24. Defendants do not have any license, authorization, permission or consent to use the Infringed Composition.

- 25. On August 16, 2012, through The Black Keys' exclusive United States publishing administrator Wixen Music Publishing, Inc., Plaintiffs provided written notice to Defendant Pinnacle that the First Infringing Advertisement containing the Infringing Music violated Plaintiffs' copyrights in the Infringed Composition and demanded that Pinnacle immediately cease and desist from any further use thereof.
- 26. Subsequently, in or around October 2012, it came to Plaintiffs' attention that Defendants and/or their agents again reproduced, distributed, and/or publicly performed the Infringing Music without Plaintiffs' authorization in a second commercial advertisement for another of Pinnacle's casinos entitled "LEGENDARY MOMENTS AWAIT" (the "Second Infringing Advertisement"). The Second Infringing Advertisement was featured on the YouTube webpage http://www.youtube.com/watch?v=hz-y0LXroVU&feature=plcp.
- 27. Defendants continue to willfully, intentionally and purposefully use and exploit the Infringing Music for their own financial benefit with full knowledge that such use constitutes infringement of, and is in disregard of, Plaintiffs' right.
- 28. Defendants' conduct also evidences a clear intent to create a likelihood of confusion and attempt to improperly trade off of The Black Keys' name and goodwill. In addition to the foregoing acts, Chesky and/or MPM's website featured a search tool under which a search for "black keys" led to a featured performance of the Infringing Music under the title "The Howler", a title confusingly similar to the title of "Howlin' For You", the Infringed Composition. A true and correct copy of a screen shot dated August 20, 2012 reflecting the results from a search for "black keys" on the Manhattan Production Music website is annexed hereto as Exhibit D.

COUNT I

FOR COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. §§ 106 and 501

[By Plaintiffs Against Defendants]

- 29. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 28 as if fully stated herein.
- 30. Through their conduct as alleged herein, Defendants have infringed Plaintiffs' copyright in the Infringed Composition by reproducing, distributing, and/or publicly performing it without authorization in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.
- 31. Defendants' acts of infringement were willful, intentional and purposeful, in disregard of and with indifference to Plaintiffs' rights.
- 32. As a direct and proximate result of the infringement by Defendants, Plaintiffs are entitled to damages in an amount to be proven at trial.
- 33. Plaintiffs are also entitled to Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504(b), including an accounting of and a constructive trust with respect to such profits.
- 34. Alternatively, the Plaintiffs are entitled to maximum statutory damages of \$150,000 for each act of copyright infringement or such other amount as may be proper under 17 U.S.C. § 504(c).
- 35. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.
- 36. As a direct and proximate result of Defendants' acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiffs are informed and believe and on that basis allege that unless enjoined and restrained by this Court, Defendants will continue to infringe Plaintiffs'

rights in the Infringed Composition. Plaintiffs are entitled to preliminary and permanent injunctive relief to restrain and enjoin Defendants' continuing infringing conduct.

COUNT II

FOR FALSE DESIGNATION OF ORIGIN PURSUANT TO 15 U.S.C. § 1125(a)

[By Plaintiffs Against Defendants]

- 37. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 36 as if fully stated herein.
- 38. Plaintiffs holds valid federal trademark registrations for the mark "The Black Keys" on the Principal Register for, *inter alia*, entertainment services, clothing, phonograph records, compact discs, pre-recorded videotapes containing musical performances, and pre-recorded audiotapes and cassettes containing musical performances (collectively, Plaintiff's "Black Keys Marks").
- 39. Defendants have used Plaintiffs' Black Keys Marks in commerce without authorization in connection with the advertising of Defendants' products or services in a manner which is likely to cause confusion and to deceive the public into believing that Defendants' products and services are affiliated with, associated with, sponsored by and/or approved by Plaintiffs, and which falsely misrepresents the nature, origin and character of Defendants' products and services as being affiliated with, associated with, sponsored by and/or approved by Plaintiffs.

- 40. The services that Defendants are promoting with the Black Keys Marks are identical or related to Plaintiffs' goods and services offered under those marks.
- 41. Plaintiffs have no control over the quality of the services that Defendants provide in connection with the Black Keys Marks. As a consequence, the favorable goodwill that Plaintiffs have developed in their valuable Black Keys Marks is at risk as a result of Defendants' use of the Black Keys Marks.
- 42. Defendants advertise their products or services to the same consumers and sell their services through the same channels of trade as Plaintiffs. In connection with their commercial advertisements and promotion thereof, Defendants have used words and descriptions that falsely and misleadingly describe their Infringing Music as affiliated with, associated with, and/or sponsored by Plaintiffs. Defendants have also misrepresented the origin, nature and character of their Infringing Music as associated with, approved by, sponsored by and/or licensed by the Plaintiffs.
- 43. Defendants' actions constitute false designation of origin which are likely to cause confusion, mistake or deception among consumers as to Defendants' products or services' supposed affiliation, connection or association with Plaintiffs, and to give the false or misleading impression as to the origin, sponsorship or approval of Defendants' products or services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).
- 44. Defendants' violations of Section 43(a) of the Lanham Act have been and are knowing, willful, intentional and deliberate.

- 45. Unless enjoined by the Court, Defendants will continue to violate Plaintiffs' rights and to cause confusion, mistake and deception, thereby causing immediate and irreparable injury to Plaintiffs.
 - 46. Plaintiffs have no adequate remedy at law.
- 47. Plaintiffs are entitled to an injunction restraining Defendants, their agents and employees, and all persons acting in concert with any one or more of them, from engaging in any of the foregoing acts pursuant to Section 34 of the Act, 15 U.S.C. § 1116.
- 48. Plaintiffs have suffered damages as a proximate result of Defendants' infringing acts and are entitled to recover Defendants' profits attributable to their acts of infringement, along with damages, costs and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

COUNT III

UNFAIR COMPETITION

[By Plaintiffs Against Defendants]

- 49. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 48 as if fully stated herein.
- 50. Defendants intended to and did trade on the goodwill associated with the Black Keys, willfully and in bad faith, by using in commerce the Black Keys' name and mark without Plaintiffs' authorization or approval in a false and misleading manner.
- 51. Defendants' infringing acts as alleged herein have caused and are likely to cause confusion, mistake and deception to consumers as to the affiliation, connection or association of Defendants with Plaintiffs, and as to the origin, sponsorship or approval of Defendants' products

and services, all to the damage and detriment of Plaintiffs and Plaintiffs' reputation and goodwill.

52. Defendants' acts are greatly and irreparably damaging to Plaintiffs and will continue to do damage unless restrained by the Court; wherefore, Plaintiffs are without an adequate remedy at law.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, as follows:

- 1. For statutory and/or compensatory damages in such amount as may be found, or as otherwise permitted by law;
- 2. For an accounting of, and the imposition of constructive trust with respect to, Defendants' profits attributable to their infringements of Plaintiffs' copyright in the Infringed Composition;
- 3. For a preliminary and permanent injunction prohibiting Defendants, and their respective agents, servants, employees, officers, successors, licensees and assigns, and all persons acting in concert or participation with each or any of them, from continuing to infringe Plaintiffs' copyright in the Infringed Composition;
- 4. For a preliminary and permanent injunction prohibiting Defendants, and their respective agents, servants, employees, officers, successors, licensees and assigns, and all persons acting in concert or participation with each or any of them, from (a) using in any form or manner the name or mark "The Black Keys," or any other name, trade name, trademark or service mark consisting, in whole or in part, of the term "The Black Keys," or any confusingly

similar name, trade name, trademark, or service mark; (b) expressly or impliedly representing themselves or their goods or services as being affiliated in any manner with Plaintiffs or as authorized, sponsored, or endorsed by or otherwise connected with Plaintiffs; (c) engaging in any conduct which will cause or is likely to cause confusion, mistake or misunderstanding as to the source, affiliation, connection, or association of Defendants or their products or services with Plaintiffs or their products or services; or (d) otherwise infringing upon the trademark rights of Plaintiffs or unfairly competing with Plaintiffs in any manner whatsoever;

- 5. For prejudgment interest according to law;
- 6. For Plaintiffs' attorneys' fees, costs, and disbursements in this action;
- 7. For such other and further relief as the Court may deem just and proper.

DATED: New York, New York January 17, 2013 MITCHELL SILBERBERG & KNUPP LLP

Bv:

Christine Lepera (CL 9311)

Christina E. Djordjevich (CD 6262)

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Telephone: (917) 546-7703 Facsimile: (917) 546-7673

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: New York, New York

January 17, 2013

MITCHELL SILBERBERG & KNUPP LLP

Christine Lepera (CL 9311)

Christina E. Djordjevich (CD 6262) 12 East 49th Street, 30th Floor New York, New York 10017 Telephone: (917) 546-7703

Facsimile: (917) 546-7673

Attorneys for Plaintiffs

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title in United States Code, aftern that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Registration Number PA 1-698-031

Effective date of registration:
June 1, 2010

Title

Title of Work: Brothers

Contents Titles: Everlasting Night

Marybeth Geters

Next Girl

Tighten Up

Howlin' For You

She's Long Gone

Black Mud

The Only One

Too Afraid To Love You

Ten Cent Pistol

Sinister Kid

The Go Getter

I'm Not The One

Unknown Brother

These Days

Completion/Publication

Year of Completion: 2010

Date of 1st Publications May 18, 2010

Nation of 1st Publication: United States

Author

Author: Dan Auerbach

Author Created: music, lyrics

Citizen of: United States

Author: Patrick Carney

Author Created: music, lyrics.

Citizen of: United States.

Domiciled in: United States

Domiciled in: United States."

Copyright claimant —	
	MoMoore McLesst Publishing
	24028 Park Sorrento, Suite 130, Calabasas, CA, 91302, United States
Transfer Statement	By.wriften agreement
Certification :	
Name	Randal Wixen
Date:	May 26, 2010



Registration #: PA0001698031

Service Request #; 1-409398011

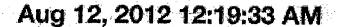


Wixen Music Rublishing, Inc. Jemifer Suomi 24025 Park Sorrento Suite 130 Calabasas, CA 91302 United States

EXHIBIT B

Tweet

DonKelly



i Auberge Baronkouge - nice rpoif of Black keys for misie in your television commendate Pay the license fee or use something else thebes or a fire something.

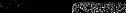
Aug 15, 2012 9:59:11 PM

@DonKelly we bought a fully licensed musical interpretation of the song.

Aug 15, 2012 10:32:44 PM

CasuberesEE Thanks for a secretary exact point: Cantiacting day exact point: Cantiase Elack Keys, so let s occur it Using southdallikes is partient;





Profile Tweet and Andrea Easter Course Batton Rouge, La http://fivialleckee.com L'Auberge Baton Rouge is a premier souithem Landestination opening Aug, 29, 20,12, Gaming problem? Please call 1-800-522-4700. Must be 214-to follow 321 Tweets 3 Favorites 493 Following 683 Followers

EXHIBIT C

8/22/12

That's the Life! L'Auberge Casino Resort Lake Charles - YouTube

Browse | Movies | Upload

O jb

jbflatt -

That's the Life! L'Auberge Casino Resort Lake Charles

idicasino Subscribe 72 videos -

Black & White 7 Sevens Slot Machine 1,000 by Videopokerplayer85 2,141 vie FEATURED VIDEO



Hitting a MEGABUCKS Jackpot as it happens by boyetoby 114.438 views



I-10 & I-210: Lake Charles, LA by Freewayjm 8,240 views



L'auberge du lac Hotel and Casino/ Lake by eviebrown48 3,021 views



Sullen Girl - Fiona Apple by shellswong 283,714 views



L'Auberge Done Right!!!! by ramillen 5.389 views



Dean Martin's Wild Party Slot Win 01-28-11 by SlotLady723 18,450 views



DoubleDown Casino Exploit! by xWislerx 18,955 views



Visiting the casinos of Biloxi and The by americancasinoguide 7,966 views



TANK LIVE! - LAKE CHARLES, LOUISIANA by dczee337 9,324 views



Trouble Makers
"Welcome to Lake
by terryloveworld
19,707 views



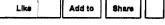
Dean Martin's Vegas Shindig Slot Bonus by nyphinix13 21,106 views



" A PARIS " - Yves Montand - No 3.wmv by MultiZanas 6,019 views



The Lotus casino by DaughterOfMusicGod 54,415 views



Uploaded by Idicasino on Sep 22, 2011

What do you think of the new commercial? Let us know!

19 likes, 10 dislikes

4,278

see all

Category:

Entertainment

License;

Standard YouTube License

Show less

Uploader Comments (Idicasino)

What is this song? dotnetpro 10 months ago

It's attricensed track inspired by Höwlin For You by the Black Keys titicasino in reply to dotnetpro 4 months ago

All Comments (19)

Respond to this video...

This is third company I know of that used a track "inspired by" The Black Keys. The worst offender is SAP, a gigantic corporation that could certainly afford to license the real thing. Bottom line is that these companies are behaving badly. I hope litigation will correct the situation.

thenathanjo 6 days ago

KICK THEIR COMPERATE ASSES PAT

The Nightwing 99 6 days ago

used with permission? their drummer just saw it. robb2155 6 days ago

Less "inspired by" and more "ripped off from."

John Schwarzkopf 6 days ago

rip off of howlin' for you!!!

www.youtube.com/watch?v=YMhzXFe8jcw&feature=youtu.be

EXHIBIT D



